

EPA Region 5 Records Ctr.



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11/20/01**BAKER & MCKENZIE**

ATTORNEYS AT LAW

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JUAREZ		

VINCENT S. OLESZKIEWICZ
(312) 861-3737

November 20, 2001

VIA FACSIMILE

Ms. Mary Fulghum
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: November 4th and 6th 2001, alleged River East dust incidents

Dear Mary:

I am in receipt of your correspondence dated November 13, 2001, regarding the above referenced matter. This letter will serve as a response on behalf of River East LLC to your letter, and is based on information gathered and interviews conducted to date. River East will supplement this response should any further information become available.

As you know, River East's first knowledge of the helicopter incident of November 4, 2001, came in the form of an e-mail from you to the undersigned on November 5, 2001. Additional e-mails and correspondence were received from counsel for Teachers Retirement System ("TRS") the owner of the parking lot at 341 E. Ohio Street relating further details of this incident.

Based upon our investigation, it appears that River East's construction management contractor, AMEC Construction Management Inc. ("AMEC"), performed a helicopter removal of equipment from the roof of the River East project on November 4, 2001. Prior to this operation, it is our understanding that AMEC notified and obtained permits from the City of Chicago to conduct this operation. The Chicago Police Department was also involved in controlling traffic during this operation.

However, and as reflected in the attached November 8, 2001, River East correspondence to Mr. Robert Rosenthal of AMEC, River East had no prior knowledge that AMEC was planning to use the adjacent 341 E. Ohio parking lot site to perform this operation. River East had no knowledge, and gave AMEC no authority or permission to enter the TRS parking lot without the permission or consent of TRS.

BAKER & MCKENZIE

Ms. Mary Fulghum
November 20, 2001
Page 2

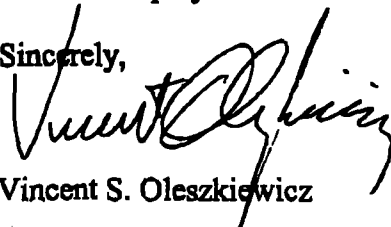
According to Jason Hayhurst, AMEC Project Executive, the helicopter briefly hovered over the TRS parking lot site to allow a AMEC employee to attached a cable to the helicopter. According to Mr. Hayhurst, access to the TRS parking lot was apparently gained by opening the gate at the site. After lifting the equipment from the River East project roof, the helicopter loaded the equipment on to a flat bed truck parked on Grand avenue, then hovered again over the TRS site while the cable was removed from the helicopter. We are currently unaware of the dates or specifics surrounding any prior helicopter activities at River East, and any additional inquiries regarding the November 4, 2001 operation or prior operations should be directed to Mr. Hayhurst. His phone number is 644-6477.

Moreover, as reflected in the attached November 8, 2001 correspondence from River East to AMEC, and due to the circumstances surrounding this incident, River East considers AMEC responsible for any liability or damage arising from this incident, and has demanded that AMEC cease and desist any further such activity without fully informing River East and all appropriate neighbors and regulatory agencies of such activities should they be planned in the future. In particular, unauthorized access to neighboring property will not be tolerated, and River East will look to AMEC to reimburse and/or indemnify River East for any damage incurred by third parties arising from the negligent acts of AMEC in connection with this or other similar incidents.

Your November 13, 2001 letter also discusses an alleged incident on November 6, 2001, regarding an air blower used to clean sidewalks in front of the River East project at Grand and McClurg. We are currently investigating this incident, but would advise that any information regarding the details of this incident would be through AMEC Project Executive Jason Hayhurst. While we believe that no impacted soils were involved in this November 6, 2001 incident, we understand the community concern cited in your correspondence. Accordingly, we will further discuss with AMEC possible alternatives for cleaning and clearing the sidewalks surrounding the River East project.

If you have any further questions, please feel free to contact me or Kevin Augustyn at River East (321-8900). We will continue to work with you and the community to address any ongoing issues or concerns in connection with the completion of the River East project.

Sincerely,



Vincent S. Oleszkiewicz

VSO/ah

cc: Kevin Augustyn, River East LLC

CHIDOC502:451481.1

MCL
C O M P A N I E S

November 8, 2001

Mr. Robert Rosenthal
AMEC Construction Management, Inc.
455 E. Illinois Street, 2nd Floor
Chicago, Illinois 60611

Re: River East, LLC - River East Center

Dear Bob:

On Monday, November 5, 2001, our outside environmental counsel, Baker & McKenzie, began to receive e-mails and correspondence from area residents, USEPA Region 5 regional counsel and counsel for Teachers' Retirement System (TRS), owner of the parking lot at 341 E. Ohio street, alleging that on Sunday, 11/4/01, a helicopter performing work at the River East, LLC project had hovered over and/or landed at the TRS parking lot causing dirt and debris to be blown about the neighborhood area. As you are aware, the TRS site is undergoing environmental investigation and remediation as indicated on the signs located on the fencing around the TRS site. The dirt and debris that allegedly became windblown by the helicopter was generated by TRS at the parking lot as a result of the environmental investigation being performed there. As reported by the above-mentioned correspondence, TRS was not aware and did not give anyone permission to access its parking lot for performance of the helicopter activities that occurred at the TRS site. In addition, these helicopter activities have allegedly occurred on more than the one occasion detailed above.

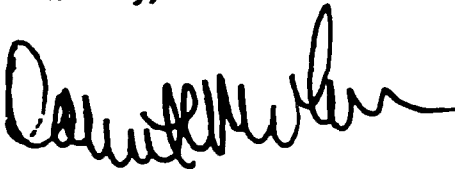
As a result of these unauthorized activities, USEPA and TRS have threatened River East, LLC in attached e-mails and correspondence with any and all environmental liability, costs, expense or damages incurred or suffered by TRS or any third party as a result of these incidents. Moreover, TRS has also threatened that River East, LLC, as a result of these activities, is now a potentially liable party under CERCLA for the contamination being investigated and remediated at its 341 E. Ohio property. River East, LLC anticipates future threatened claims for liability and damage from TRS, USEPA and other third parties.

This correspondence will serve as our notice to AMEC that River East, LLC had no prior knowledge that AMEC was planning to use the adjacent site (341 E. Ohio) to perform this helicopter operation at the River East, LLC site. Certainly, River East, LLC had no knowledge, and gave AMEC no authority or permission, to enter the TRS parking lot without the permission of TRS. Therefore, River East, LLC will look to AMEC to reimburse damages incurred by third parties for any and all costs, expenses and liability arising from the negligence of AMEC in connection with the incidents described above. Furthermore, River East, LLC hereby demands indemnification from AMEC for and against any claims brought against River East, LLC by any third parties arising out of the incidents described above.

Finally, River East, LLC hereby demands that AMEC cease and desist any further activity, such as the activities described above, which potentially causes an impact on surrounding properties undergoing environmental investigation or remediation, until River East, LLC is fully informed of and authorizes such activity, in order to appropriately notify all environmental and other regulatory authorities, neighbors and residents of such activities should they be planned in the future.

Please contact the undersigned immediately to further discuss this issues raised herein.

Sincerely,



Daniel E. McLean
President

DEM:sb

cc: Kevin Augustyn
Charles Landefeld
Stacey Thomas
Randy Grueb
Mitch Becker, AMEC, NY
[REDACTED]
Mike Moynihan, Pedersen & Houpt



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

13 NOV 2001

REPLY TO THE ATTENTION OF C-14J

VIA FACSIMILE AND U.S. MAIL

Vincent Oleskiewicz
Baker & McKenzie
One Prudential Tower
130 E. Randolph
Chicago, Illinois 60601

RE: November 4 and 6, 2001
River East Dust Incidents

Dear Vince:

As you are aware, on Sunday, November 4, 2001 at approximately 8:15 am, a construction contractor working for your client, River East LLC reportedly trespassed upon the vacant lot at 341 E. Ohio. As you also know from previous correspondence, the 341 E. Ohio property is subject to the Lindsay Light Unilateral Administrative Order V-W-'96-C-352, as amended, because it is contaminated with thorium wastes associated with the Lindsay Light and Chemical Company operations formerly located at your client's property at 316 E. Grand Avenue. According to several witnesses, personnel inside the fenced and gated 341 E. Ohio property kicked piles of dirt, apparently in an attempt to provide a level landing area for the helicopter. These witnesses also described a helicopter hovering over and then landing upon 341 E. Ohio. Workers on the ground then attached a cable to the helicopter. The helicopter lifted and retrieved equipment from the 316 E. Grand construction project and placed it on a truck in the street. Witnesses also told U.S. EPA that the helicopter's propeller wash blew considerable dust and debris from 341 E. Ohio onto the streets and sidewalk and into the air. Several concerned citizens called the City of Chicago's 311 line and were referred to U.S. EPA's hotline. Later, U.S. EPA received information that River East has used the 341 E. Ohio as a helicopter staging area during several weekends over the past few months.

River East is a named respondent in the 1996 Lindsay Light UAO, as amended, and is subject to its provisions. U.S. EPA is reviewing that order to determine if River East has violated its provisions or other provisions of CERCLA that prohibit interference with a response action.

In addition to the helicopter dust incident, area residents also reported that on November 6, 2001, workers using an air

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blower to clean the sidewalk in front of the River East building at the intersection of Grand and McClurg streets created a dust cloud. Again, because contaminated soils have been found in this area, the community is concerned that the dust also may be contaminated.

These two incidents have created unnecessary alarm in the Streeterville community, that thorium-contaminated dust may have been blown from the 341 E. Ohio location or from the McClurg/Grand sidewalk opening. Based upon the information that we have at this time, we do not believe any contaminated material was made airborne by either the workers' kicking of the soil boring piles or the wash from the helicopter propellers. We request that you take all necessary precautions to control dust as required by City and State environmental regulations and all appropriate precautions-given the heightened sensitivity of the Streeterville community to the potential for exposure to thorium contaminated dust.

In order to allow us to protect human health from potential releases of hazardous substances, respond fully to citizen inquiries and assure that we have a complete record of events, please send a brief written summary of your client's account of the events on November 4 and 6, including the names, job titles and companies involved in each incident. This request for information is made pursuant to Section 104(e) of CERCLA. We would appreciate receipt of this summary in advance of the November 20, 2001 Streeterville Organization of Active Residents meeting that we have been invited to attend.

These two incidents also point to the need for a response to our letter dated December 21, 2000 regarding the Kraft Building parking lot thorium contamination. Our concern for proper control of the contaminated area is underscored by the thorium-contaminated soil River East recently excavated from beneath the sidewalk on the east side of McClurg Street.

Please send your written reply to this letter. If you would like to discuss this matter further, please contact me at (312) 886-4683, or call my co-counsel, Padma Klejwa, at (312) 886-4683.

Sincerely,


Mary L. Fulghum
Associate Regional Counsel

cc: Mort Ames, Corporate Counsel
City of Chicago



City of Chicago
Richard M. Daley, Mayor

Department of Environment

William F. Abolt
Commissioner

Twenty-fifth Floor
30 North LaSalle Street
Chicago, Illinois 60602-2575
(312) 744-7606 (Voice)
(312) 744-6451 (FAX)
(312) 744-3586 (TTY)

<http://www.ci.chi.il.us>

November 29, 2001

Richard G. Berggreen, C.P.G.
Principal Geologist
STS Consultants, Ltd.
750 Corporate Woods Parkway
Vernon Hills, Illinois 60061

Subject: Dust Incident at 341 E. Ohio St.

Dear Mr. Berggreen:

On November 4, 2001, the Department of Environment (DOE) was notified via 311 that a helicopter flew over and landed at 341 E. Ohio resulting in dust clouds being blown throughout the area. The site contained piles of dirt that had removed from sampling activities. We have been informed that the sample results showed to the United States Environmental Protection Agency confirmed that this material did not contain any radioactive material above regional background levels.

While it is our understanding that you had not given permission for your site to be used, we are writing to remind you that all appropriate dust minimization procedures should be taken when excavating and stockpiling soil. This includes covering and/or containerization of excavated soil to reduce the possibility of dust emissions. Failure to utilize best management practices and dust minimization may result in enforcement actions by the Department of Environment. Attached for your use is a Department of Environment dust control plan that outlines these procedures.

Thank you for your cooperation. If you have any questions, please call Naren Prasad at (312) 744-5711.

Sincerely,

Alexandra Holt
Deputy Commissioner

Attachment

cc: Don Smith - DOE
Mort Ames - Law
Mary Fulghum, Larry Jensen, Fred Micke, Verneta Simon - USEPA

ADH:nmp\dustletter1.wpd





City of Chicago
Richard M. Daley, Mayor

Department of Environment

William F. Abolt
Commissioner

Twenty-fifth Floor
30 North LaSalle Street
Chicago, Illinois 60602-2575
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(312) 744-3586 (TTY)

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CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT DUST CONTROL PLAN

Dust and other airborne material created by on-site activities shall be controlled and suppressed to prevent off-site migration and disturbance of the surrounding community. Such dust control measures shall include, but not necessarily be limited to the following:

1. The streets, sidewalks and sewers adjacent to the Site shall be kept clear of dust, mud, and debris generated from the Site activities. The Operator shall utilize a mechanical street sweeper equipped with a water spray and vacuum system in order to effectively maintain and clean these areas daily;
2. All on-site surfaces subject to vehicle traffic shall be watered as often as necessary to minimize the occurrence of dust both on and off-site;
3. Stockpiles shall be wetted to control dust during site activities.
4. Any stockpiled soil remaining on site beyond the work day must be containerized in roll-off boxes and tarped to prevent windblown dust.
5. The Operator shall extend filter fabric to the top of the security fence surrounding the Site to prevent the migration of dust; and
6. Site activities, including the stockpiling of materials, shall be conducted away from surrounding streets, pedestrian walk-ways, and residential areas. The Operator shall maintain a sufficient setback distance for site activities to prevent nuisances to these areas.

None of the foregoing waives the Department of Environment's rights to initiate enforcement action against the owner and/or operator of the Site to protect public health and safety, or to enforce applicable laws and regulations including the Code and the Illinois Environmental Protection Act. Failure to comply with the above conditions or Federal, State, or local laws, regulations, or permits may result in closure of Site activities. Additionally, if the Operator creates excessive dust or noise in the neighborhood, DOE will pursue appropriate enforcement actions, including, but not limited to, daily issuances of a Notice of Violation for at least Sections 11-4-630, and 7-28-080 of the Code.

Please complete the following:

I will assure that all work conducted at _____ and adjacent right-of-way will be performed in a manner consistent with the aforementioned conditions and in compliance with all applicable local, state, and federal laws, rules, and regulations

Signature _____
Name (print) _____
Company _____
Phone No. _____

Signed by Department of Environment _____

Date _____

